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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Implement Senate Bill 520 and
Address Other Matters Related to
Provider of Last Resort.

Rulemaking 21-03-011

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This Scoping Memo and Ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1. and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Procedural Background

This proceeding implements the provider of last resort (POLR) requirements and framework directed by Senate Bill (SB) 520 (Hertzberg; 2019, Ch. 408). Legislative analysis of the bill noted that the electric investor-owned utilities' (IOU) obligation to serve has been in existence nearly one hundred years in California. The analysis also found that: "As such, most of the specific requirements needed to serve this obligation are largely taken for granted and assumed within the IOU framework. However, with the growth in non-IOU load serving entities (LSE), these elements must be more clearly identified (and perhaps valued) to ensure customers have continued reliability of their electric service."

On March 18, 2021, the California Public Utilities Commission (Commission) issued an Order Instituting Rulemaking (OIR) to address the enactment and implementation of SB 520.

In SB 520 the Legislature defines POLR for the first time in statute as:

a load-serving entity that the commission determines meets the minimum requirements of this article and designates to provide electrical service to any retail customer whose service is transferred to the designated load-serving entity because the customer's load-serving entity failed to provide, or denied, service to the customer or otherwise failed to meet its obligations.

SB 520 also confirms that each electrical corporation is the POLR in its service territory. There are six electrical corporations currently operating in California: three large IOUs Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison (SCE), and three smaller or multi-jurisdictional IOUs PacifiCorp, Bear Valley Electric Service Division of Golden State Water Company (Bear Valley), and Liberty Utilities (CalPeco Electric) LLC (Liberty). All six are already subject to the existing obligation to serve under California Pub. Util. Code Section 451.

In addition, SB 520 directs the Commission to establish a framework to allow other entities to apply and become the POLR for a specific area (a "Designated POLR"). The application process and procedure to become a Designated POLR will be addressed in Phase 2 of this proceeding.

On April 26, 2021, the following parties filed comments to the OIR:

1) Small Business Utility Advocates, 2) PG&E, 3) SCE, 4) California Energy Storage Alliance, 5) Direct Access Customer Coalition, Alliance for Retail Energy Markets, and the Regents of the University of California, jointly, 6) Utility Consumer's Action Network, 7) SDG&E, 8) PacifiCorp d/b/a Pacific Power, Liberty Utilities (CalPeco Electric), LLC, and Bear Valley Electric Service, Inc. (collectively the California Association of Small and Multi-jurisdictional Utilities (CASMU)), jointly, 9) Shell Energy North America (US), L.P., 10) California

Choice Energy Authority (CalChoice) and the following cities: City of Pomona, City of Palmdale, City of Santa Barbara, City of Lancaster, Town of Apple Valley, City of Pico Rivera, City of Rancho Mirage, City of Baldwin Park, and City of Commerce (collectively “the CalChoice Cities”), jointly, 11) Public Advocates Office of the California Public Utilities Commission, 12) California Community Choice Association, 11) Golden State Power Cooperative, and 13) Clean Coalition.

On April 29, 2021, the assigned Administrative Law Judge (ALJ) granted both the Solar Energy Industries Association and the Large-Scale Solar Association’s motions for party status by separate ruling.

On May 10, 2021, the following parties filed reply comments to the OIR: 1) PG&E, 2) SDG&E, 3) California Community Choice Association, 4) City of Cerritos, 5) The Utility Reform Network, 6) CalChoice and the CalChoice Cities, collectively, and 7) SCE.

A prehearing conference (PHC) was held on June 11, 2021 to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

After considering the OIR, parties’ comments and reply comments on the OIR, and the discussion at the PHC; I have determined the issues and initial schedule of the proceeding to be as set forth in this Scoping Memo.

2. Issues

This proceeding will be considered in three phases. Phase 1 will focus on the issues necessary to establish a comprehensive framework for existing POLRs, as discussed in Section 2.1. Phase 2 will set rules that allow a different entity to be designated as POLR, as discussed in Section 2.2. Phase 3 may be opened to consider other issues identified but not scoped into Phases 1 and 2 of this

proceeding, as discussed in Section 2.3. Further, as provided in Resolution E-5059, should a dispute arise concerning reentry fees that requires Commission consideration, the matter will be reviewed as a track within one of the three Phases.

2.1. Phase 1: POLR Service Requirements and Customer Migration Rules

Phase 1 of this OIR will address POLR service requirements, cost recovery, and options to maintain Greenhouse Gas (GHG) emission reductions in the event of an unplanned customer migration to the POLR. It will also include emergent and cross-proceeding issues to the extent appropriate.

Phase 1 will address the framework for IOUs as the existing default POLRs and customer migration rules, as follows:

- A. As required by Section 387(j), develop and implement a framework for POLR service requirements, including minimum procurement requirements to ensure no disruption in service; including the following:
 - a. Examine the standard and duration of POLR service (including for example, criteria for determining at what point POLR service is deemed a return to bundled service).
 - b. Identification of services/actions and costs involved in POLR service before and after an unplanned migration of customers.
 - c. Determine minimum procurement requirements to ensure no disruption in service.
- B. As required by Section 387(g), develop and implement a framework for recovery of POLR costs.
- C. Assess whether the financial security requirement established in Decision (D.) 18-05-022 fulfills statutory directives.

- D. Examine whether any modifications or additions to the requirements set forth in D.18-05-022 are needed, including what modifications, if any, are needed to the reentry fees and financial security requirements to better reflect market prices to ensure continuity of service in light of SB 520.
- E. Assess whether existing Community Choice Aggregator (CCA) registration and de-registration processes are adequate to manage load migration and ensure continuity of service.
- F. Identification of any additional registration or de-registration requirements that would improve continuity of service, including whether any ongoing financial reporting requirements are necessary for registered CCAs.

2.2. Phase 2: Designated POLR Application and Requirements

Phase 2 will build on the Phase 1 decision to set the requirements and application process for other non-IOU entities (*i.e.*, a CCA, Energy Service Provider (ESP), or third-party) to be designated as the POLR in place of an existing POLR. Phase 2 will implement the relevant provisions of SB 520 regarding conditions for determining POLR designation for these other non-IOU entities.

2.3. Phase 3: Other Issues

A Phase 3 may be needed to address specific outstanding issues not resolved in Phase 1 and 2 of this proceeding, or other issues that may arise during the course of the proceeding, including but not limited to recommendations to the legislature.

3. Need for Evidentiary Hearing

Issues involving cost allocation of POLR-related fees and other issues potentially include contested, material issues of fact. Accordingly, we will allow

parties to present evidence on these issues. A deadline to request evidentiary hearing for Phase 1 issues is provided for in the schedule below.

4. Changes to Respondent List and Limiting Participation for Certain LSE Classes

The OIR named all electrical corporations subject to Section 387 of the Pub. Util. Code as respondents to this proceeding because they are the current providers of last resort. The OIR also named all CCAs and all ESPs, also known as Direct Access providers, as respondents to this proceeding because the POLR service and cost recovery framework may impact CCA and ESP costs and responsibilities, and because this proceeding will address various other issues related to coordination, LSE failures, and load migration.

In comments to the OIR and at the PHC, the CASMU members requested their removal as respondents to this proceeding. We observe that CASMU members currently have no LSE competition in their service areas; however, they could have retail competition at some point in the future. As CASMU has requested, we will amend the respondent list so that CASMU members are no longer respondents to this proceeding. However, by submitting comments on this OIR, CASMU is a party and may submit further comments in this proceeding, although it will not be required to do so. Importantly, determinations in this proceeding will apply to all IOUs, including CASMU members. CASMU members are on notice that they will be bound by decisions made in the proceeding.

In addition, SCE requested the Commission name the City of Cerritos as a respondent in this proceeding, to which the City of Cerritos objected. While the City of Cerritos shall not be named as a respondent to this proceeding, the City of Cerritos is on notice that it shall be bound by any decisions in this proceeding.

By submitting comments on this OIR, the City of Cerritos is a party and may submit further comments in this proceeding, although it will not be required to do so.

5. Oral Argument

Unless comment is waived pursuant to Rule 14.6(c)(2) for granting the uncontested relief requested, a party may make an oral argument on issues in phases of this proceeding which do not provide an opportunity for briefing before the Commission, provided that the party makes such request by motion no later than the time for filing opening briefs or, if opening briefs are not permitted by the Scoping Memo, within the time and in the manner specified in the Scoping Memo or later ruling in the proceeding.

6. Schedule

This proceeding will address the scope of issues in three phases. This Scoping Memo sets the schedule for Phase 1 of this proceeding. Phase 1 will include two initial workshops. The first workshop will be held to review existing responsibilities and tasks the IOUs currently undertake, and would undertake if called upon to serve electricity to customers as POLR, in their default roles as POLRs (Workshop 1). This workshop will provide parties to this proceeding with a common frame of reference regarding the current state of default POLR service. Workshop 1 will also review the current state of ESP and CCA registration and the required financial security requirement, as well as de-registration and reentry fees.

We also will ask parties to respond to additional questions, after initial workshops. An assigned Commissioner or assigned ALJ ruling will seek party comment on additional questions, including common definitions for this proceeding. Information from these questions will be further vetted through a

second initial workshop (Workshop 2) to continue discussion of these topics and provide an opportunity for parties to present proposals.

The following schedule is adopted here and may be modified by the assigned Commission or assigned ALJ as required to promote the efficient and fair resolution of the rulemaking:

EVENT	DATE
<i>Phase 1 (POLR Service Requirements, Cost Recovery, & Customer Migration)</i>	
Workshop 1: Current Status: Review of operation and expectation of POLR Service, registration, and financial security requirements: presentation from IOUs, Staff and other LSEs.	October 29, 2021
Ruling with questions to parties issued	Q4 2021/Q1 2022
Workshop 2: Party proposals and other topics, as needed.	Q4 2021/ Q1 2022
Opening Comments on questions to parties	Q1 2022
Reply Comments on questions to parties	Q1 2022
Rule 13.9 Joint Case Management Statement with request for evidentiary hearings and/or briefs	Q1 2022
Evidentiary Hearings (if needed)	Q2 2022
Opening Briefs (if needed)	Q3 2022
Closing Briefs (if needed)	Q3 2022
Phase 1 Interim Proposed Decision	No later than 90 days from the submission of Phase I
Phase 1 Interim Final Decision	No sooner than 30 days after the Proposed Decision
Additional Workshops/Comments/Other (as needed)	TBD
Phase 1 Proposed Decision	No later than 90 days from the submission of Phase I
Phase 1 Final Decision	No sooner than 30 days after the Proposed Decision
<i>Phase 2 (Designated POLR Application and Requirements)</i>	

EVENT	DATE
PHC to consider Phase 2 issues	TBD
Phase 3 (<i>Other Issues</i>)	
PHC to consider Phase 3 issues	TBD

Each Phase will stand submitted upon the last filing required in the Phase under the procedural schedule, unless the assigned Commissioner or assigned ALJ requires further evidence or argument.

Given the need for workshops, comments, and potentially evidentiary hearings and briefing, additional time beyond the standard 18 months will be needed to conclude Phase 1 of this proceeding. Phase 1 of this proceeding is anticipated to be concluded no later than 24 months from the issuance date of this Scoping Memorandum. Based on this schedule, we set the resolution date of this proceeding at 24 months, pursuant to Pub. Util Code Section 1701.5(b). A separate Scoping Memorandum will be issued for Phase 2 and Phase 3, which may amend the deadline for resolution of this proceeding.

7. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of Practice and Procedure and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The

proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

8. Category of Proceeding and *Ex Parte* Restrictions

This scoping memo confirms the Commission's preliminary determination that this is a quasi-legislative proceeding for all Phases.¹

9. Public Outreach

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website.

Respondents to this rulemaking were identified as all current load serving entities, direct access providers, community choice aggregators, and IOUs. Respondents were placed on the official service list and served with the OIR.

In addition, the Commission served the OIR on the official service lists for the following proceedings: Integrated Resource Planning and Procurement (Rulemaking (R.) 20-05-003), Resource Adequacy (R.19-11-009), Renewables Portfolio Standard (R.18-07-003), Power Charge Indifference Adjustment (R.17-06-026), Direct Access (R.19-03-009), Microgrids (R.19-09-009), and Reliable Electric Service in Extreme Weather (R.20-11-003).

This OIR was also served on the California Independent System Operator and the following state agencies: 1) California Energy Commission, 2) California Air Resources Board, and 3) the California State Water Resources Control Board.

¹ OIR at 22.

10. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by July 12, 2021, the first business day following 30 days after the PHC.

11. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

12. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

13. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission’s website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on

the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission’s subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

14. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

15. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Presiding Officer in this proceeding. Zita Kline is the assigned ALJ.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing may be needed.
4. The Presiding Officer is Commissioner Darcie L. Houck.
5. The category of the proceeding is quasi-legislative.

This order is effective today.

Dated September 16, 2021, at San Francisco, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck
Assigned Commissioner